

10 CIV 2116

"ECF Case"

CIVIL COVER SHEET

JS 44C/SDNY
REV. 1/97
WEB 12/02

JUDGE CHIN

This civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

MAR 10 2010

PLAINTIFFS SMITH WALLER

DEFENDANTS COCA-COLA ENTERPRISES INC.

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

ATTORNEYS (IF KNOWN)

Finkelstein & Partners, LLP, 1279 Route 300 P. O. Box
1111, Newburgh, New York 12551 Phone # (800)634-
1212

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. Section 2000e, et seq.)

Has this or a similar case been previously filed in SDNY at any time? No ☒ Yes? ☐ Judge Previously AssignedIf yes, was this case Vol ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date _____ & Case No. _____

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

ACTIONS UNDER STATUTES

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
[] 110 INSURANCE	PERSONAL INJURY	[] 610 AGRICULTURE	[] 422 APPEAL	[] 400 STATE
[] 120 MARINE	[] 310 AIRPLANE	[] 620 FOOD & DRUG	28 USC 158	REAPPORTIONMENT
[] 130 MILLER ACT	[] 315 AIRPLANE PRODUCT	[] 625 DRUG RELATED	[] 423 WITHDRAWAL	[] 410 ANTITRUST
[] 140 NEGOTIABLE	LIABILITY	SEIZURE OF	28 USC 157	[] 430 BANKS & BANKING
INSTRUMENT	[] 320 ASSAULT, LIBEL &	PROPERTY		[] 450 COMMERCE/ICC
[] 150 RECOVERY OF	SLANDER	21 USC 881		RATES/ETC
OVERPAYMENT &	[] 330 FEDERAL	[] 630 LIQUOR LAWS	PROPERTY RIGHTS	[] 460 DEPORTATION
ENFORCEMENT OF	EMPLOYERS'	[] 640 RR & TRUCK	[] 820 COPYRIGHTS	[] 470 RACKETEER INFLU-
JUDGMENT	LIABILITY	[] 650 AIRLINE REGS	[] 830 PATENT	ENCED & CORRUPT
[] 151 MEDICARE ACT	[] 340 MARINE	[] 660 OCCUPATIONAL	[] 840 TRADEMARK	ORGANIZATION ACT
[] 152 RECOVERY OF	[] 345 MARINE PRODUCT	SAFETY/HEALTH		(RICO)
DEFAULTED	LIABILITY	[] 690 OTHER		[] 810 SELECTIVE SERVICE
STUDENT LOANS	[] 350 MOTOR VEHICLE	LABOR	SOCIAL SECURITY	[] 850 SECURITIES/
(EXCL. VETERANS)	[] 355 MOTOR VEHICLE	[] 710 FAIR LABOR	[] 861 MIA (1395FF)	COMMODITIES/
[] 153 RECOVERY OF	PRODUCT LIABILITY	STANDARDS ACT	[] 862 BLACK LUNG (923)	EXCHANGE
OVERPAYMENT OF	[] 360 OTHER PERSONAL	[] 720 LABOR/MGMT	[] 863 DIWW (405(g))	[] 875 CUSTOMER
VETERANS BENEFITS	INJURY	RELATIONS	[] 864 SSID TITLE XVI	CHALLENGE
[] 160 STOCKHOLDERS		[] 730 LABOR/MGMT	[] 865 RSI (405(g))	12 USC 3410
SUITS		REPORTING &		[] 891 AGRICULTURE ACTS
[] 190 OTHER CONTRACT		DISCLOSURE ACT		[] 892 ECONOMIC
[] 195 CONTRACT PRODUCT		[] 740 RAILWAY LABOR ACT	FEDERAL TAX SUITS	STABILIZATION ACT
LIABILITY		[] 790 OTHER LABOR		[] 893 ENVIRONMENTAL
		LITIGATION	[] 870 TAXES	MATTERS
		[] 791 EMPL RET INC	[] 871 IRS-THIRD PARTY	[] 894 ENERGY
		SECURITY ACT	20 USC 7609	ALLOCATION ACT
				[] 895 FREEDOM OF
				INFORMATION ACT
				[] 900 APPEAL OF FEE
				DETERMINATION
				UNDER EQUAL ACCESS
				TO JUSTICE
				[] 950 CONSTITUTIONALITY
				OF STATE STATUTES
				[] 890 OTHER STATUTORY
				ACTIONS

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.?
IF SO, STATE:

DEMAND \$1,000,000.00 OTHER _____ JUDGE _____ DOCKET NUMBER _____

Check YES only if demanded in complaint

JURY DEMAND: ☒ YES ☐ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(SEE REVERSE)

(PLACE AN 'x' IN ONE BOX ONLY)

ORIGIN

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from (Specify District) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judge Judgment

(PLACE AN 'x' IN ONE BOX ONLY)

BASIS OF JURISDICTION

- ☐ 1 U.S. PLAINTIFF ☐ 2 U.S. DEFENDANT ☐ 3 FEDERAL QUESTION (U.S. NOT A PARTY) ☒ 4 DIVERSITY

IF DIVERSITY, INDICATE
CITIZENSHIP BELOW.
(28 USC 1322, 1441)

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF DEF <input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF <input type="checkbox"/> 3 <input type="checkbox"/> 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF <input type="checkbox"/> 5 <input type="checkbox"/> 5
CITIZEN OF ANOTHER STATE	<input type="checkbox"/> 2 <input type="checkbox"/> 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	<input type="checkbox"/> 4 <input checked="" type="checkbox"/> 4	FOREIGN NATION	<input type="checkbox"/> 6 <input type="checkbox"/> 6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES) (Calendar Rule 4(A))

SMITH WALLER
71 Duncan Avenue
Cornwall-on-Hudson, NY 12520
Orange County - State of New York

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES) (Calendar Rule 4(A))

COCA-COLA ENTERPRISES INC.,
111 Fairview Park Drive
Elmsford, NY 10523
County of Westchester - State of New York

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ FOLEY SQUARE
(DO NOT check either box if this a PRISONER PETITION.)

DATE 3/9/2010

SIGNATURE OF ATTORNEY OF RECORD

X

RECEIPT # ANDREW G. FINKELSTEIN, ESQ.

ADMITTED TO PRACTICE IN THIS DISTRICT

☐ NO

☒ YES (DATE ADMITTED Mo. 03 Yr. 1992)
Attorney Bar Code # AF 1070

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge MAG. FRANCIS is so Designated.

J. Michael McMahon, Clerk of Court by _____ Deputy Clerk, DATED _____

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

UNITED STATES DISTRICT COURT
JUDGE CHIN
NEW YORK

FOR THE SOUTHERN

District of

SMITH WALLER,

Plaintiff,

V.

COCA-COLA ENTERPRISES INC.,

Defendants.

SUMMONS IN A CIVIL CASE

10 CIV 2116
CASE NUMBER:

TO: (Name and address of Defendant)

COCA-COLA ENTERPRISES INC.
111 Fairview Park Drive
Elmsford, NY 10523

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Finkelstein & PARTNERS, LLP
1279 Route 300. P. O. Box 1111
Newburgh, NY 12551

an answer to the complaint which is herewith served upon you, within Twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON

MAR 10 2010

CLERK

DATE

(By) DEPUTY CLERK

OAO 440 (Rev. 8/01) Summons in a Civil Action

RETURN OF SERVICE

Service of the Summons and complaint was made by me ⁽¹⁾	DATE
NAME OF SERVER (<i>PRINT</i>)	TITLE

Check one box below to indicate appropriate method of service

- Served personally upon the defendant. Place where served: _____
- Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left: _____

- Returned unexecuted: _____

- Other (specify): _____

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL
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DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____

Date

Signature of Server

Address of Server

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

JUDGE CHIN

10 CIV 2116

File #96871-01/seh

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
SMITH WALLER,

Plaintiff,

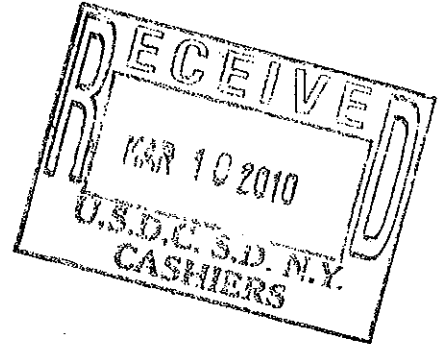
-against-

COCA-COLA ENTERPRISES INC.,

Defendant.
-----x

COMPLAINT

Plaintiff Demands
Trial by Jury



Plaintiff, complaining of the defendant, by attorneys,
FINKELSTEIN & PARTNERS, LLP, respectfully show this Court and
allege, upon information and belief, the following:

JURISDICTION AND VENUE

1. This action is brought pursuant to Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. Section 2000e, et seq.) The jurisdiction of this Court is invoked to secure protection of the redress deprivation of rights guaranteed by federal law, which provides for injunctive and other relief for illegal discrimination in employment. Plaintiff further invokes the pendent jurisdiction of the Court to consider claims arising under state law.

2. Plaintiff, SMITH WALLER, is an adult mail individual and a citizen of the United States of America who currently resides in the County of Orange, State of New York.

3. Plaintiff was filed a timely charge of discrimination with the Equal Employment Opportunity Commission (EEOC) and has met all administrative prerequisites for the bringing of this action.

4. Defendant was an employer in Elmsford, County of Westchester, State of New York at the time the alleged acts of discrimination occurred.

5. At all times relevant hereto, defendant, COCA-COLA ENTERPRISES INC., engaged in an industry affecting commerce and employed more than fifteen (15) regular employees.

6. That from approximately September 13, 1983 through February 23, 2009, the plaintiff was employed by the defendant, COCA-COLA ENTERPRISES INC., in the capacity of a truck driver.

7. That at all times relevant hereto the plaintiff performed his job satisfactorily and competently.

8. That the plaintiff suffered a stroke on December 25, 2008 and was hospitalized and out of work from that date until the present time.

9. That on or about the 23rd day of February, 2009, plaintiff informed his Supervisor that he was released by his doctor to return to work, but unable to drive a truck.

10. That on or about the 23rd day of February, 2008, as a result of the aforesaid plaintiff requested a position to be a dispatcher.

11. That on or about the 23rd day of February, 2008, defendant, COCA-COLA ENTERPRISES INC., did refuse to accommodate plaintiff and as a result did discharged plaintiff from his position with

defendant, COCA-COLA ENTERPRISES INC.,.

12. That based upon information and belief, the defendant, COCA-COLA ENTERPRISES INC., did discharge plaintiff from his employment based upon his disability, age, seniority and the fact that defendant choose to hire younger and less expensive personnel, which is a direct violation of right secured to the plaintiff by Title V of the Civil Rights Act of 1964, as amended.

13. That by reason of the foregoing, this plaintiff has suffered damages for lost wages including back pay, as well as future lost wages, future benefits and counsel fees as a result of defendants conduct.

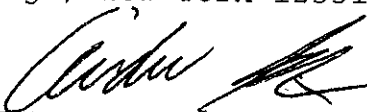
WHEREFORE, plaintiff demands the following relief against the defendant:

- A. Compensatory damages in the sum of \$1,000,000.00.
- B. Punitive damages in the sum of \$1,000,000.00.
- C. Award plaintiff the costs of this action including reasonable Attorneys' fees, and such other legal and equitable relief as the court deems just and proper.

Yours, etc.,

FINKELSTEIN & PARTNERS, LLP
Attorneys for Plaintiff(s)
Office & P.O. Address
1279 Route 300, Box 1111
Newburgh, New York 12551

BY:



Andrew G. Finkelstein, Esq.
(AF 1070)

TO: COCA-COLA ENTERPRISES INC
Defendant
c/o Secretary of State
1 Commerce Plaza
Albany, NY 12231